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GENERAL HEADINGS

Cases Reported this Week.

Current Topics.

The Additional Birthday Honours.

THE FURTHER list of Birthday Honours contains the name of Sir ARTHUR NORMAN HILL, of the firm of HILL, DICKINSON, & Co., of Liverpool, and Mr. WILLIAM JOYNSON-HICKS, M.P., of the London firm of JOYNSON-HICKS, HUNT, CARDEW, & MACDONALD, upon each of whom a baronetcy has been bestowed; upon Sir ARTHUR NORMAN HILL, as chairman of the Port and Transport Executive Committee, and for special war services to the Ministry of Shipping; and upon Mr. JOYNSON-HICKS for public services, including the raising of two battalions of the Middlesex Regiment.

The Legislative Output.

IT LOOKS as though the Government would secure the chief measures which they set out to pass during the Session. The Ministry of Health Act was passed on 3rd June and the Housing, Town Planning, &c., Act was passed on 31st July, though up to Thursday it had not been issued. A little expedition on the part of the authorities in this case would probably have been welcomed. Then it looks as though the Transport Bill, the Land Settlement (Facilities) Bill, and the Acquisition of Land Bill would be passed before the adjournment; but the Patents and Designs Bill and the Trade Marks Bill, which were only introduced on 15th July, and for which there has been little opportunity for proper consideration, will, it appears, be postponed. As to the Profiteering Bill it is of little use to speak until the form in which it emerges from its hurried discussion is known. In any case, its practical working will, we imagine, be awaited with more misgiving than hope of substantial good.

Mr. Hoover on the Economic Situation in Europe

THE *National Food Journal*, since it was first started in September, 1917, has proved of great utility to those who have had to follow the intricacies of the numerous Food Orders, and has from time to time contributed valuable comments on the food situation; but it has probably had nothing so important as the statement by Mr. HOOVER on the Economic Situation in Europe which is published in the current number (13th August). It commences with the observation that "the economic difficulties of Europe as a whole at the signature of Peace may be almost summarized in the phrase 'demoralized produc-

tivity.'" Perhaps after the ruin of a five years' war—for the catastrophe by no means ended with the Armistice—this was only to be expected, but Mr. HOOVER indicates in detail how the breakdown of productivity has been caused and the means by which its consequences can be met. The breakdown is due not only to the destruction of the war, but to the aftermath of trouble—largely moral and industrial—which it has brought in its train, and he notes, among other causes, the continuation of the blockade after the Armistice. Whether this should have been continued at all is a question with which we need not deal. To many it seemed to be due to the short-sighted—or, perhaps, conflicting—views of the Allies. And in any case this is only one of the causes to which Mr. HOOVER attributes the present ills. Others are the extravagance of the classes whom the war or the rise in wages has made rich, or comparatively rich, whilst to others—those of fixed income, the unorganized workers and the unemployed—the rising cost of living means the greatest hardship. But we cannot pretend to summarize Mr. HOOVER'S analysis. We need not go further than his insistence on the need for production:—

> No economic policy will bring food to those stomachs or fuel to those hearths that does not secure the maximum production. There is no use of tears over rising prices; they are, to a great degree, a visualization of insufficient production.

And he points out that "production cannot increase if political incompetence continues in blockade, embargoes, censorship, mobilization, large armies, navies and war." The only remedy is in the foresight of statesmen and the co-operation of peoples.

The Office of Lord Advocate.

THE Lord Advocate is not an official of whom the English public often hear, and his precise position is very little understood. It is known that he has wide powers; what is not known is that until very lately he had almost despotic powers in Scotland. Like the Attorney-General, he is chief law officer of the Crown, but he has much wider powers, since no criminal prosecution can be taken except by him or else with his consent (granted only twice, both historic occasions). All the powers vested in England in the Treasury Solicitor and the Director of Public Prosecutions are in his hands—although his local representatives in each county, the procurator-fiscals, are in practice very powerful and independent. He represents the Crown in all civil actions, and until twenty years ago was the only "King's Counsel" in Scotland; he alone spoke "within the bar"—but this is now no longer the case. He has statutory powers of suing under the Bankruptcy Acts, the Patents Acts, the Lunacy Acts, and the Charity Acts. Private proceedings affecting public interests, even civil proceedings, can only be taken with his concurrence. In addition, until very recently he exercised all the administrative powers now exercised in Scotland by the Home Secretary (reprieves and pardons), the Secretary of State for Scotland (Local Government affairs), and the Scottish Office of the Board of Education. There is no Lord Chancellor in Scotland, so the Lord Advocate takes his place, and has all Crown and judicial patronage in his gift. Indeed, he is actually a member of the Court of Session, which consists of the Lord President, Lord Advocate, Lord Justice Clerk and eleven ordinary members. His status is, therefore, high, and to this day his power is very great. Curiously enough, however, he is not the leader of the Scots Bar; that office belongs to the Dean of Faculty, an advocate elected by his fellow members of the Bar.

Dundas as Lord Advocate.

THE ENORMOUS powers formerly vested in the Lord Advocate, who from 1707 to 1832 was practically the only Scots Minister, and had all Scottish authority in his hands, explains the dictatorial position of the great Lord Advocates in the eighteenth century. GRANT, of Preston Grange, the Whig Lord Advocate who put down the beaten Jacobites after Culloden with such merciless severity, will be remembered by readers of STEVENSON as a very human "dictator" in the pages of "Catriona." His possession of three beautiful daughters, whom he married to the great magnates of Scotland, somewhat softens his memory as a man of "blood and iron." And DUNDAS, who ruled Scotland during the twenty years of the younger PITT'S continuous Parliamentary success, is still more the type of dictator in the memories of Scots lawyers. DUNDAS did what he liked in Scotland. He nominated every Member of Parliament, for the close borough corporations, who elected the town members, and the owners of "baronies" (*anglicé*, Lords of the Manor), who elected the county members, were alike at his mercy. He could imprison at will, the writ of *Habeas Corpus* running not in Scotland, and could detain a prisoner without trial for nine months—a power still vested in the Lord Advocate, by the way, and used in the famous case of the alleged Bolshevist leaders on the Clyde. At one time there existed a cumbrous remedy against the Lord Advocate known as "running the letters" against him, *i.e.*, applying to the Court of Session for a Royal letter patent directing the Lord Advocate to state a charge or release the prisoner; but this remedy is now obsolete, and in any case did not secure the release of the prisoner, but only the initiation of criminal proceedings. Now, after nine months, *Habeas Corpus* is available. DUNDAS also nominated all judges, sheriffs, procurator-fiscals, and every holder of legal office in Scotland. Indirectly he named the parochial clergy, since patrons of livings dared not disobey his all-powerful will. All excise officers and administrative officials, happily not then so numerous as now, were appointed by him. When he added the office of Secretary to the India Board of Control to that of Lord Advocate, his power became still more despotic, for his enormous patronage in India enabled him to refuse a career in that country to the Scots student who was not a Tory—and in that day, as nowadays, the Indian Civil Service was the great avenue for the young Scotsman of "parts" at the Universities.

Prosecutions in Scotland.

ALTHOUGH THE Lord Advocates of to-day are shorn of many of their former glories, they still retain two enormous powers not possessed in England by the Attorney-General; they appoint to all legal and judicial offices, so that the judges, sheriffs, principal and substitute, procurator-fiscals—in a word the whole judicial machinery of the country, high and low, justiciary and magisterial—are dependent upon them. They also, as stated above, possess the sole right to prosecute, except, of course, on magisterial summonses. A private prosecutor, or a police official, or a sheriff-clerk (*anglicé*, Clerk to the Peace), cannot prosecute of his own motion as in England. He can only do so with the concurrence of the Lord Advocate, who never in ordinary practice grants this concurrence in the case of offences triable by the Court of Justiciary. The prosecution must be represented either by the Lord Advocate in person or by his subordinates, the Solicitor-General and the four Advocate Deputies. The result is that the administration of the Criminal Law is more centralized and more standardized in Scotland than in England.

Liability of Common Carriers.

THE House of Lords have affirmed (*ante*, p. 736) the decision of the Court of Appeal in *London and North Western Railway Co.* v. *J. P. Ashton & Co.* (1918, 2 K. B. 488), which is rightly regarded by the railway world as of great practical importance. The railway company had received at their London office a parcel of furs for through carriage, rail and boat, to Belfast. The furs were over £10 in value and no declaration of value had been made by the consignors as required by section 1 of the Carriers Act, 1830. The result, of course, is that, if the parcel is lost in transit on land, the consignors cannot recover under the common law liability of the carriers as "insurers," but only if they can prove negligence or other tortious conduct of the company or of its servants, for whom it is responsible. So far all is familiar law. But where goods are sent on a through contract covering sea voyage as well as land journey, and are lost somewhere on the journey, a further point arises. It arose in this case. The goods were so lost; the consignors claimed damages; the railway company pleaded the statute, and the

question arose whether the plea was good. The decision of all four courts which heard the case—County Court of Bloomsbury, Divisional Court, Court of Appeal, House of Lords—was that (1) the statutory defence only applies when the company are acting as "common carriers," (2) they are not so acting when the goods are at sea where the carrier is merely their agent to perform part of the contract made by them, and (3) they cannot plead the statutory defence unless they can prove that the goods were lost on land. Failing the discharge of this burden of proof, they remain liable to the plaintiff for non-delivery of his goods as promised, and so the courts all decided. The decision of the House of Lords thus sets at rest one of the most debated points of railway law.

Appeals from Courts of Summary Jurisdiction.

THE CASE OF *Moseley* v. *Director of Public Prosecutions* (reported elsewhere) puts an end to a *quaestio vexata* on an important point of procedure under the Summary Jurisdiction Acts. It removes the doubt which has existed for years about the right of appeal where a person is charged with an indictable offence which for the first time became possible either for London magistrates or country justices fully to dispose of with the Summary Jurisdiction Act, 1879, s. 13. As far as country justices are concerned no doubt has existed that, if a person pleads guilty, having elected to be tried summarily instead of being committed for trial, he has no right of appeal to Quarter Sessions from the decision and sentence of the justices. Section 19 of the Summary Jurisdiction Act, 1879, is conclusive. But in London there have been contentions whether the right of appeal in such a case did or did not exist. Among other instances may be mentioned one of *Buckle* v. *Denman* at the London Sessions in 1916. It has not been reported, but it was noted in the *Justice of the Peace* of October 14, 1916, page 408. It is quite evident that both the Bench and the Bar were very dubious how the matter stood. The question was not raised, however, by case stated, and the justices decided, as they said with regret, that there was no appeal to them where the person charged had pleaded guilty. It was certainly a strong step on the part of the court in *Moseley* v. *Director of Public Prosecutions* to disregard the fact that an unlimited right of appeal from the London magistrates was given by section 50 of the Metropolitan Police Courts Act, 1839, in express terms. But the decision fits in with *The Queen* v. *Justices of London, ex parte Lambert* (40 W.R. 575, 1892; 1 Q.B. 664), under the similar and corresponding section 12 of the Act of 1879. A decision otherwise would certainly have left an illogical and non-intelligible distinction between procedure in the Metropolis and the country. Mr. Justice DARLING appeared to consider such an incongruity decisive in its absurdity. His sharp eye for the ludicrous was attracted by the spectacle of an appeal being allowed from a skilful professional lawyer magistrate in London, but forbidden from two or three country gentlemen, assisted by a solicitor who occasionally, once a week or once a fortnight, gives his attention to the criminal practice of the courts.

Causa Proxima.

THE COURT OF APPEAL have just affirmed (*ante*, p. 736) the decision of the Commercial Court Judge in *Britain Steamship Company, Ltd.* v. *The King* (1919, 1 K.B. 575), a petition of right against the Admiralty. The point raised once more the question of the respective liability of the Crown and the underwriters in certain classes of losses during the war, and as we have commented on all such cases as they arose it may be useful to note briefly the present point and the decision. It is scarcely necessary to remind our readers that during war British ships were usually protected against loss in two ways, by an ordinary policy of marine insurance in the case of "sea risks," and by the Crown—either by special policy or otherwise according to the relationship of the ship to the Government service—against risks arising out of "warlike operations." In a large number of cases, however, the loss has been due to some cause which is at once a "sea risk" and connected with "warlike operations," and the question of liability in all such cases depends on whether or not the "warlike operations" were the *causa proxima* of the sea risk. In *Britain Steamship Co.* v. *The King* a ship was lost by what unquestionably was an ordinary sea risk. But in fact she was wholly in the service and under the control of the Admiralty when lost, having been requisitioned by the Director of Transport and chartered for Admiralty service on the terms of Form T.99. The underwriters claimed that, as she was completely under Admiralty control for war use, "warlike operations" must be held to be the *causa proxima* of any and every sea risk and loss she might suffer. This is arguable enough in view of the long line of cases where stranding or collision of a ship obeying the directions of a convoy has been held to be the result of "warlike operations," but the court refused to give so wide an extension to a doubtful principle, and held that the operations were not the *causa proxima* of the loss.

The Retirement of County Court Judges.

WE print elsewhere the text of the Bill which has been introduced by the Attorney-General for the retirement of county court judges. The last occasion, we believe, on which the matter was before the Legislature was in 1912, when it was dealt with as part of the County Courts Bill of that year, a Bill which was a re-introduction of previous Bills. But these previous Bills included a much wider scheme of change; in particular, the Bill of 1912 proposed by clause 1 to confer unlimited jurisdiction on county courts, subject to the right of removal to the High Court on the application of the defendant. Probably this will come in time, but there has not hitherto been sufficient agreement to secure its acceptance, and that, as well as the extension of the jurisdiction of registrars (clause 5), forms no part of the present Bill. When the question of county court jurisdiction comes to be taken up, it is almost inevitable that the occasion will be treated as suitable for the closer co-ordination of the county courts with the High Court, and the decentralization of divorce jurisdiction will be one of the principal matters to be dealt with.

The present Bill touches only a part of the Bill of 1912—namely provisions for county court judges and the payment of deputies—but it goes beyond that Bill in providing for compulsory retirement at a certain age. The present statutory provisions with respect to deputies and retiring allowances are contained in sections 18 and 24 of the County Courts Act, 1888. Under section 18 a judge may appoint a deputy, subject, if he is to act for more than fourteen days at a time, to the approval of the Lord Chancellor, but no provision is made for payment of a deputy judge, and that, we believe, is a matter of arrangement between the judge and his deputy. And there is no provision made for the allowance of a pension to a retiring judge, except under section 24, but this only applies where the judge is afflicted with some permanent infirmity disabling him from the due execution of his office. The Bill of 1912 met both these omissions. By clause 16 a pension might be granted after twenty years' service, and by clause 17 a deputy might be paid by the Treasury. In both cases the recommendation of the Lord Chancellor was required.

The present Bill provides by clause 1 for compulsory retirement at the age of seventy-two years, and enables pensions to be granted in three cases—(*a*) on compulsory retirement, (*b*) on retirement through permanent incapacity due to infirmity of mind or body, and (*c*) after fifteen years' service if the judge has attained the age of sixty-five years. The amount of the pension is set out in the schedule, and at the present rate of salary varies from £300 for less than five years' service to £1,000 for fifteen years' or more. Provision is made for resumption of duty in case of recovery on pain of forfeiting the pension. Clause 3 provides that the new provisions shall not apply to any judge appointed before 1st June, 1919, unless he elects to accept them in lieu of the provisions under section 24 of the Act of 1888. Clause 4 provides for payment of deputies by the Treasury.

Apart from the scale of pensions in the Schedule, which

seem to start at too low a figure, the provision of the Bill which is likely to be questioned is that for compulsory retirement. The age fixed is seventy-two, but this may be extended to seventy-five if the Lord Chancellor considers that the retention of the judge's services would be desirable in the public interest. The age is not so low as the limit of seventy years which has been introduced for London magistrates, and under which Mr. DE GREY had to retire recently, but it is a further attempt to impose a time limit for judicial office, and hitherto this has not met with favour. It was discussed not many years ago—in 1913—in the proceedings of the Royal Commission on Delay in the King's Bench Division, and both the late Lord ALVERSTONE and Lord PHILLIMORE—then Mr. Justice PHILLIMORE—were opposed to it. Lord ALVERSTONE said as follows:—

> I should certainly not retire a judge as long as he can do his work. I am quite satisfied that the best years of the judges' lives in my lifetime have been the last ten years of their work. You want to learn to be a judge. It is astonishingly difficult; a man may be a great lawyer and yet not a great judge, and a man may be a poor lawyer and yet be an excellent judge. Judges are appointed much younger now than they used to be, but the great men I have known have done their best work between the ages of sixty-five and eighty, or certainly between sixty-five and seventy-five.

And he referred to Lord HALSBURY, "the best President in the House of Lords I have ever practised before," and to the appointment of MANISTY, J., at the age of sixty-eight (see 57 SOLICITORS' JOURNAL, page 497). Lord PHILLIMORE said: "I think judges do very good work very often past seventy, and in many ways they mature." For himself he said: "The work I do is so hard that if I was a younger man I could not do it," and "one man is old at sixty-five and another man is not old at seventy-five." When asked why civil servants had to retire at a fixed age, he said:

> Because people made a very foolish rule some years ago; also I think the judicial faculties last longer. It is not like executive faculties, you do not want *élan* and go, you want care and thought and judgment, and I think they would last a good many years longer than the faculties of an executive character.

And he had no age to suggest above which judges should not be appointed.

These *dicta* call for careful consideration of the present proposal. It may be said that they relate to High Court judges specially, but there appears to be no real distinction. The physical effort of a county court judge's life may perhaps be greater than that for some High Court judges, but the responsibility and mental strain are not so great, and these considerations seem to balance. Civil servants have the chance of going after retirement into commercial life, and we believe that they largely avail themselves of it. But this is not a suitable ending to a judicial career, nor is it very practicable for a retired judge to resume work at the Bar. Doubtless when the Bill is proceeded with the grounds for the proposal will be stated. At present we are not aware that it is made in response to any general demand for a judicial age limit, and we question its advisability.

Trade Combinations.

II.

WE gave a summary last week of the American Federal legislation designed to check the evils incident to trade combinations. In addition to this there is a great mass of State legislation having the same object, some of which is shortly referred to in the Report of the Committee on Trusts, and the Report also refers to the Canadian Combines Investigation Act of 1910; the Australian Inter-State Commission Act of 1912; the New Zealand Monopoly Prevention Act of 1908, which is a combination of two earlier Acts of 1905 and 1907; the New Zealand Commercial Trusts Act of 1910; and the Union of South African Meat Trade Act of 1907.

Under the Canadian Combines Investigation Act, 1910, any six or more British subjects of full age resident in Canada can apply to a judge for an order directing an investigation into an alleged combine whereby prices have been enhanced or competition restricted to the detriment of consumers or producers, and if it appears to the judge that there are reasonable grounds for the charge, and that it is in the public interest to order an investigation, he shall order one to be made by a Board of Investigation. "Combine" is defined to mean (section 2 (*c*)):—

> Any contract, agreement, arrangement, or combination which has, or is designed to have, the effect of increasing or fixing the price or rental of any article of trade or commerce, or the cost of the storage or transportation thereof, or for the restricting competition in, or for controlling the production, manufacture, transportation, storage, sale, or supply thereof, to the detriment of consumers or producers of such article of trade or commerce, and includes the acquisition, leasing, or otherwise taking over, or obtaining by any person to the end aforesaid, of any control over or interest in the business, or any portion of the business of any other person, and also includes what is known as a trust, monopoly, or merger.

Under section 3 the Minister of Labour has the general administration of the Act, and under section 4 a registrar of Boards of Investigation is appointed by the Governor-General. Sections 4 to 6 prescribe the procedure for making the application, and section 7 defines the duties and powers of the judge. Sections 9-17 provide for the appointment of Boards. These are appointed by the Minister, and consist of three members, one appointed on the recommendation of the applicants, one on that of the persons concerned in the alleged combine, and the third on the recommendation of the other two, but the third must be a judge, and he acts as chairman of the Board. The Board holds an inquiry, and makes a report, and the report with any minority report, is published in the *Canada Gazette*, and distributed by the Minister in such manner as he thinks desirable as a means of securing compliance with the board's recommendations (sections 18-20). As a result, the Governor-General in Council may order exemption from or reduction of import duties (section 21), or patents may be revoked by the Exchequer Court of Canada (section 22); and under section 23 a penalty may be imposed up to a thousand dollars and costs for each day of the continuance of the offence after the publication of the report of the board or such extended time as may be allowed. By section 25 the proceedings of the board are to be conducted in public, but the board may order that any portion shall be conducted in private. The board has for the purposes of an investigation all the powers of a civil court of record for summoning witnesses and administering oaths, and calling for the production of papers (section 32). Section 40, which forbids a member of a board to accept, in addition to his authorized allowances and travelling expenses, any gratuity from any person interested under a penalty up to 1,000 dollars is, we believe, not usually a matter of express provision in such legislation.

The Commonwealth Inter-State Commission Act, 1912, defines "commerce" as including trade and traffic of all descriptions by land or water, and defines also "external commerce" and "inter-state commerce," and the Minister for the purposes of the Act as the Minister of Trade and Customs (section 3). By section 4 an Inter-State Commission is established consisting of three members, one of whom must be of experience in the law. These are appointed by the Governor-General, each for a term of seven years, one being appointed as Chief Commissioner. The Commission may hold sittings in any part of the Commonwealth. They must not act in any matter in which they are interested, and must give their whole time to the performance of their duties. Section 16 defines the duty of the Commission. This is to investigate, from time to time, all matters which in the opinion of the Commission ought in the public interest to be investigated affecting (*a*) the production of and trade in commodities; (*b*) the encouragement, improvement, and extension of Australian industries and manufactures; (*c*) markets outside Australia, and the opening up of external trade generally; (*d*) the effect and operation of Commonwealth Tariff Acts and other Revenue legislation; (*e*) prices of commodities; (*f*) profits of trade and manufacture; (*g*) wages and social and industrial conditions; (*h*) labour, employment, and unemployment; (*i*) bounties paid by foreign countries to encourage shipping or export trade; (*j*) population; (*k*) immigration; and (*l*) other matters referred

to the Commission by either House of the Parliament, by resolution, for investigation. And under section 17 the Commission may investigate matters affecting other questions. Part IV. (sections 18-22) deals with inter-state traffic, and requires that all common carriers' rates for or affecting inter-State commerce shall be reasonable and just. Every such rate which is unreasonable or unjust is prohibited (section 18), and by section 19 preferential railway treatment as between States is declared unlawful. This section applies to State railways. Section 21 makes similar provision as regards common carriers and State authorities other than State railways. Part V. (sections 23 to 44) regulates the judicial powers of the Commission. Its jurisdiction extends to adjudicating upon (*a*) preference and discrimination by any State or State authority or common carrier in contravention of the Act or of the provisions of the Constitution relating to trade or commerce or any law made thereunder; (*b*) the justice or reasonableness of rates in respect of, or affecting, inter-State commerce; (*c*) anything done or omitted by any State, or State authority, or common carrier, or any person in contravention of the Act or of the provisions of the Constitution, &c. (as under (*a*)).

Section 25 is of sufficient interest to quote in full:—

> 25. Any person complaining against any State, State authority, common carrier or person of anything done or left undone in contravention of this Act, or of the provisions of the convention relating to trade and commerce, or any law made thereunder, may apply to the Commission, and the Commission may hear and determine the matter of the complaint according to equity and good conscience, and in such manner as to do justice between the parties, and may for that purpose, if it thinks fit, direct and prosecute, in such mode and by such persons as it thinks proper, all such inquiries as it deems necessary.

Section 26 makes provision for complaints by public authorities, including the Commonwealth, any State or State Railway Authority, municipality, or trade association, chambers of commerce and agriculture; and under section 27 the Commission can proceed without complaint. The relief which can be granted is—general relief according to the nature of the claim; damages; injunction or other proper mandatory process; declaration of the nullity of any improper State regulation; and direction as to future action (sections 29-33); and penalties up to £200, or, in case of continuing disobedience, £200 a day, may be imposed for disobedience to an order of the Commission (section 34). No appeal lies from the Commission except an appeal to the High Court on questions of law only (section 42). By section 45 the Commission is required to make annual reports to the Minister of the work of the preceding year. It has power to send for witnesses and documents, but evidence can only be taken in private when considered desirable in the public interest (section 49 *et seq.*). Section 58 provides that nothing in the Act shall make it compulsory for any witness to disclose to the Commission any secret process of manufacture. An employer who dismisses an employee for appearing as a witness before the Commission or giving evidence is guilty of an indictable offence, punishable with £500 or imprisonment for one year (section 67). Each Commissioner has in the exercise of his duty the same protection and immunity as a judge of the High Court (section 69).

These Overseas Acts are of special interest at the present time when similar experimental legislation is likely to be tried here or—if the Profiteering Bill is placed in the same category—is about to be tried, and hence we have given the provisions in greater detail than they are accessible in the report of the Committee on Trusts.

(To be continued.)

The Income Tax Commission.

III.

(Continued from p. 701.)

THE second instalment of the Minutes of Evidence taken by the Income Tax Commission includes 4th and 5th and 18th and 19th June, and among the witnesses were Mr. CHARLES EDWARDS, M.P., on behalf of the South Wales Miners' Federation; Mr. C. G. SPRY, an Assistant Secretary to the Board of Inland Revenue; Mr ROGER W. CARTER, the author of that useful work "Murray and Carter's Guide to Income Tax Practice"; Dr. MARION PHILLIPS, on behalf of the Standing Joint Committee of Industrial Women's Organizations; Mr. P. D. LEAKE, F.C.A., the author of "Depreciation and Wasting Assets"; Mr. NIND HOPKINS, one of the Inland Revenue Commissioners; and Mr. FRED. HUGHES, Assistant General Secretary of the National Union of Clerks. The paging of this instalment runs on from the previous instalment. Mr. CHARLES EDWARDS dealt with the well-known objection of the South Wales miner to the lowering of the limit for exemption from £160 to £130. At present the demand is for a limit of £250, that being based on the amount required for a reasonable standard of living (pp. 114, 121), though, in fact, the limit for exemption seems to have been originally fixed, not on this principle, but because it was too difficult to reach the weekly wage earner by direct taxation. (Mr. SPRY, p. 131.) The idea of "minimum subsistence" was repeated by Dr. MARION PHILLIPS (p. 158), and Mr. NIND HOPKINS considered the two principles to be first, the taxpayer's ability to pay, and, secondly, the cost of collection of small amounts (pp. 186, 187). There is also the consideration, said by Mr. CHARLES EDWARDS to be real, that miners, when they have made enough to live on, sometimes knock off work, because to earn more would involve the payment of tax (p. 116). It is interesting to compare this with the suggestion made by Mr. KERLY in his examination of Mr. NIND HOPKINS (p. 218):—

> 4449. Is it not the fact that large incomes in businesses are generally made by men late in life—I mean the very large incomes?—Yes, in some businesses, and particularly in many professions that is so.
>
> 4450. Certainly in one profession—when they are almost moribund. Is there not a danger, if you tax the larger incomes very severely, that at a time when a man has the opportunity of continuing his exertions, or of increasing them, he may say, "why should I; why should I earn 17s. in the £ for the State and 3s. for myself?"—if the income tax is, as I have seen it suggested, going up to somewhere like 17s. in the £?—I hope it is clear, whatever I have done to-day, that I have made no such suggestion as that.

We leave the members of the Junior Bar to consider what profession Mr. KERLY was referring to.

The question of the various allowances which are now made was discussed with several witnesses. There is, for instance, the allowance of £25 in respect of a dependant who is, through old age or infirmity, unable to earn his living. But, as Mr. CHARLES EDWARDS pointed out, this does not allow for the not uncommon case where a miner has been killed and his son keeps on the home to enable the mother to look after the other children. The son had no allowance for the mother as a dependent relation, though he has it for his brothers and sisters (pp. 117, 120), but this has now been altered by Section 21 (*b*) of the Finance Act, 1919. The inference seems to be that the question of abatement should depend on the maintenance of a household, and not, as it normally does, on married life. But the whole question is in the experimental stage. Claims to larger allowances in respect of children were made by Dr. MARION PHILLIPS (p. 160), and to some extent these are met by the Finance Act, 1919; also in the raising of the wife's allowance to £50. "The allowance in the income tax of abatements on account of family responsibilities is," said Mr. NIND HOPKINS, "quite a recent growth, and perhaps it may be said that so far the Legislature has been merely feeling its way," and he suggested certain extensions (p. 201). Elsewhere the reason for confining these allowances to incomes not exceeding £800 and £1,000 a year was discussed (Mr. SPRY, p. 134). Incidentally, it may be noticed that a small breeze arose in the course of Mr. NIND HOPKINS' evidence in consequence of a suggestion which appeared to be made by a member of the Commission that he was speaking on behalf of middle-class taxpayers and not from an impartial official point of view; but this was repudiated to the satisfaction of the Commission (pp. 204, 206).

The question of the different possible methods of graduating the tax was dealt with by Mr. NIND HOPKINS in his evidence, and elaborate explanatory tables were put in. "Until 1909," he pointed out, "the British income tax was graduated only by means of abatements. At the present time it is graduated by abatements, by variation in the rate of tax, and by a super-tax, which is itself charged at varying rates on different sections of the income." The allowances just referred to operate by way of abatement. At p. 197 will be found a new method of graduation suggested by Mr. NIND HOPKINS for the purpose of eliminating "jumps"; that is, over-abrupt rises in the effective rate of tax at certain points (see par 4018). These jumps are illustrated by graphs given in Appendix No. 12. The matter requires too much detail for us to go further into it here, and, however desirable it may be to avoid jumps, yet the primary consideration is that the method of graduation adopted will be readily understood. The ordinary taxpayer

will never rise to the level of mathematics and accountancy which marks the income-tax expert, and he will require to know how the assessment made upon him is arrived at. This view was put by Sir E. Nott-Bower at p. 205, but the passages in which Mr. Nind Hopkins' suggested mode of graduation was discussed are too long for quotation. He agreed, on being questioned, that it would be difficult for the taxpayer to understand, and he did not recommend it. We are afraid the patience of the Commission must have been tried by the putting forward of schemes which can be appreciated only by the income tax *virtuoso*, though we notice that Professor Pigou, at p. 210, appears to have agreed with Mr. Nind Hopkins that there is a proper place in the system for a mathematical formula. Anyone who is interested can follow the matter up from the references we have given. We will conclude our remarks on this point by quoting Mr. Kerly's very sensible summary of the discussion in questions addressed to Mr. Nind Hopkins (p. 217):—

> 4419. You have dealt with various systems of graduating by a formula?—Yes.
>
> 4420. Is it not highly desirable that the scale of graduation should be fixed once for all and attributed, if possible, to some general principles which will command a natural respect, so that it should not be open to critics of the Chancellor of the Exchequer every year to propose an alteration in the scale?—I quite agree that it is desirable as far as you can have it.
>
> 4421. I put it to you that it is a matter of the first political importance, when the income tax is becoming the chief source of revenue of the country?—Yes, I quite see that it is desirable to have a scale of rates bearing an intelligible relation to each other as far as possible, and capable of being moved up or down as a whole.

The question of the taxation of the incomes of husband and wife as a single aggregate income was prominent in the first instalment of evidence. Separate assessment has been provided for since 1914 (see Mr. Spry's evidence, p. 125), but the taxing of each income independently or—another method which has been suggested—dividing the aggregate income by two, and taxing each half as a separate income, raises disputable questions of principle, as well as involving a large loss to the revenue. The practical reason for treating the aggregate income as a single taxable income is that it forms in fact a common fund for the maintenance of the home (p. 127). So Mr. Roger W. Carter said (p. 148):—

> 3139. (8) Since the incomes of husband and wife essentially form one fund there does not seem to be any unfairness in requiring them to be aggregated for income tax purposes, particularly as where the wife has earnings these are treated as a separate income. The system of taking the wife's "unearned" income as being the husband's is inconsistent, but probably necessary to guard against a division between husband and wife of the unearned income of the husband. Were the two incomes treated as separate for all purposes, the relief afforded would operate mostly to the relief of people of considerable means. The demand would be more appropriately met by an increase in the wife allowance.

The suggestion made by previous witnesses that the effect of single taxation is to encourage living together without marriage does not appear to find much support (pp. 130, 141).

We notice that Mr. Carter, while he thinks that the complications of the present system are such as to render it almost impossible for anyone but a professional man of considerable experience to confute any liability except in the very simplest cases, is not hopeful as to this being altered, and generally does not find serious fault with the system (p. 147):—

> 3133. (2) Perhaps with the exception of—
>
> (*a*) The charge on the gross income of a wasting asset, and
>
> (*b*) The charge in the case of a life insurance business, &c., on interest, though that amount may be greatly in excess of profit,
>
> I do not know that I would suggest there are any glaring anomalies in the Acts.

But he makes certain suggestions with a view to simplification, and he advises that payments of salaries, interest and dividends "free of income tax" should be prohibited, except, perhaps, in the case of ordinary dividends. "Each person should bear his own tax, and, where necessary, salaries should be increased accordingly." Mr. Leake (pp. 172, 175) makes a similar recommendation, and points out that Paragraph 61 of the Report of the Company Law Amendment Committee recommends that payment to directors "free of income tax" or of super-tax shall be forbidden.

We can do no more than call attention to the interesting evidence given on the question of deduction in respect of wasting assets by Mr. Herbert Gibbs in respect of nitrate grounds (pp. 142 *et seq.*), and more generally by Mr. Leake (pp. 161 *et seq.*). The matter is highly technical, and it appears difficult to make a clear distinction between the portion of returns which is profit, and therefore should be taxable, and the portion which represents expired capital outlay, and should not be taxed. A draft clause dealing with the matter, prepared by Mr. Leake, is given at p. 169. We may call attention, also, to Mr. Carter's evidence with respect to the assessment of partners' income tax (pp. 150, 153).

(*To be continued.*)

Books of the Week.

Juridical Review.—July, 1919. W. Green & Son (Limited).

International Law.—A New Principle of International Law. By A. M. M. Montijn, LL.D., Barrister, The Hague. Belinfanta Bros. (Limited), The Hague.

Reporting.—Technical Reporting. Centenary Edition, Revised. By Thomas Allen Reed. Sir Isaac Pitman & Sons (Limited). 3s. 6d.

Income Tax.—Complete Income Tax Chart, with Excess Profits Duty Supplement. Income Tax, Excess Profits Duty, Super-Tax, &c.; Chart of Rates, Allowances and Abatements for 1919-1920 and fifteen previous years. Fourth Edition. Compiled by Charles H. Tolley, A.C.I.S., Accountant. Waterlow & Sons (Limited): 2s. net (post free); or separately, Chart 1s. 6d., Supplement 1s.

CASES OF LAST SITTINGS.

Court of Appeal.

A. LYLE-SAMUEL *v.* ODHAMS (LIM.) AND "NATIONAL NEWS" (LIM.) AND VICTORIA HOUSE PRINTING CO. (LIM.). No. 2. 30th July.

Practice—Discovery—Libel—Interrogatories—Sources of Newspaper Information—Special Circumstances—Nature of Information.

It is a proper exercise of the discretion of the Judge at Chambers for him to refuse to allow the defendant in a libel action to be interrogated as to the sources of his information and the name of the person giving it, where the defendant is the editor of a newspaper and no special circumstances exist which take the case out of the rule which applies in favour of newspapers.

Adams *v.* Hayes-Fisher (30 *T. L. R.* 288) *followed.*

Appeal from an order of Roche, J., affirming the Master's order refusing permission to the plaintiff to administer certain interrogatories to the defendants in a pending libel action, with the object of obtaining particulars as to the sources of their information, on which the statements were based, with the names of their informants. The plaintiff, who represents the Eye Division of Suffolk, complained of an alleged libel contained in an article published in the *National News* of Sunday, 8th December, 1918. The defendants are the proprietors, printers and publishers of that newspaper. He alleged that the statement, published at the time when he was a Parliamentary candidate, was an unjustifiable attack upon him, not only in respect of his public career, but also in respect of his private and domestic life. The innuendo he placed on the words used was that he (the plaintiff) was an unscrupulous and dishonest adventurer, who had married his first wife solely for the sake of her money, and had tricked her of her money, and by his conduct had driven her insane, and had then deserted her and left her to die in a pauper lunatic asylum, and that he had married his second wife solely for the sake of her money, and that he had been engaged in company promoting transactions of a dishonest character; in short, that his record was so unclean that he was unfit to be a Member of Parliament and was unworthy of the trust and confidence of any respectable person. The defendants pleaded (*inter alia*) that the words did not bear the meaning the plaintiff attributed to them, and in their natural and ordinary meaning were true in substance and in fact, and that they were a fair and bona fide comment on a matter of public importance—to wit, the antecedents of the plaintiff, who was then a Parliamentary candidate.

The plaintiff, by leave, appealed to the Court of Appeal.

Bankes, L.J., in giving judgment, said the appeal was from an order of Roche, J., at Chambers, disallowing certain parts of interrogatories which were administered by the plaintiff to the defendants with reference to the defence pleaded. The interrogatories were with the object of ascertaining what information the defendants had upon which they had founded their alleged comment, and the sources from whence that informatioon was obtained. It was now well established that in an action against an individual for libel who was not carrying on a newspaper business, it was open to interrogate him for the purpose of ascertaining the materials upon which he based his alleged justification for what he had said, and the name of his informant, in order to decide whether the defendant might not have been misled or whether he had been actuated by malice. But is was also established that, so far as that Court was concerned, there was a binding exception to that rule in the case of a newspaper. That exception was clearly

laid down in the *Plymouth Mutual Co-operative and Industrial Society, Ltd.* v. *The Traders' Publishing Association* (1906, 1 K. B. 403), and Stirling, L.J., stated that it was well established in the absence of special circumstances and was binding upon the Court of Appeal. Counsel for the plaintiff urged that in every case where it could be shown that the alleged libel must necessarily be outside the rule upon which the exception was founded special circumstances existed. It was necessary, therefore, to consider the ground upon which the exception was based. That was to be found in the case of *Adams* v. *Hayes-Fisher* (30 T. L. R. 288), where Buckley, L.J., said the reason why newspapers came within the exception seemed to be two-fold: "One answer was that it might be assumed that the object of getting the name of the informant of a newspaper was to sue the informant, which was plainly improper. The second answer was that a newspaper stood in such a position that it was not desirable on grounds of public interest that the name of a newspaper's informant should be disclosed." It must be that the Lord Justice was there referring to what might compendiously be spoken of as the "freedom of the Press." An editor ought not to be compelled to disclose the name of his informant or the source of the information on which he founded his article. Counsel, however, advanced a somewhat different reason, and suggested that the foundation of the rule was that it was for public interest that a newspaper should be at liberty freely to criticise the conduct of any individual without disclosing the name of its informant, but only where it criticised such individual as a public man in his public capacity with regard to his fitness for some public position, and therefore special circumstances excluding the rule from applying must exist in any case where the attack was shown not to be covered by the rule he suggested. He went on to say that the present case was one which was not covered, because, reading the libel, it was manifest that it was the private character and life of the plaintiff which was attacked. The article was entirely devoid, from any point of view, of being a criticism made in the public interest. The Court, however, could not decide an issue which would have to go before a jury for the purpose of saying whether, on the language used, special circumstances existed. There was no test laid down to decide what constituted special circumstances, but none of those suggested during the argument by counsel appeared to him satisfactory. It was not for the Court to say what the language of the alleged libel really meant, or to consider the good or bad taste of the writer of the article. This was an action against a newspaper for libel, and in that case the rule which refused to order disclosure of sources of information applied and the appeal failed.

SCRUTTON, L.J., concurred. A comment alleged to be fair might become unfair if made from a malicious motive, and the proposed interrogatories might become very material in such a case. If one approached the matter outside the decided cases, there was much to be said in favour of asking questions as to the person from whom the information was received. It might be a person who had been convicted of perjury or of such a character as to be, and to be well known to be, thoroughly unreliable. There was, however, a rule of practice which had prevailed for some years, according to which this kind of interrogatory was not allowed in the case of a newspaper. Counsel in the present case had relied on various matters as being special circumstances taking the case out of the rule—first, an undertaking, it was said, had been given that no proceedings should be taken against the informant if his name was disclosed. That did not amount to a special circumstance. Next, it was said that the rule only applied in order to enable newspapers freely to criticise public men in their public character and not in their private life. In his opinion the private life of a member of Parliament ought to be considered as to whether he was fit for a public career. Lastly, it was said that in this particular libel the newspaper might have obtained the information from unreliable sources, might, in fact, have been misled. But it was impossible to extract from the pleadings that probability, and, under the circumstances, he was bound by the previous decisions of the Court of Appeal, and there was nothing in the case which indicated any special circumstances which would take it out of the rule which protected newspapers. The appeal would be dismissed.—COUNSEL, for the plaintiff, *Douglas Hogg*, K.C., and *St. John Field*; for the *National News, Barrington Ward*, K.C., and *du Parcq*; for the other defendants, *Sir Hugh Fraser*. SOLICITORS, *Field, Roscoe, & Co.*; *J. T. Monks*.

[Reported by ERSKINE REID, Barrister-at-Law.]

High Court—Chancery Division.

Re **BLECKLY. SIDEBOTHAM** *v.* **BLECKLY.** Eve, J. 17th July.

WILL—CONSTRUCTION—GIFTS TO SONS AND DAUGHTERS—LEGITIMATE AND ILLEGITIMATE CHILDREN—GIFT TO "SONS"—ONLY ONE LEGITIMATE SON—KNOWLEDGE OF TESTATOR.

A testator gave his residuary estate to his "wife" for life, and expressed a wish that his wife would out of the income maintain his unmarried daughters, and after the death of his wife he directed a £1,000 to be raised for "each daughter," and, subject thereto, he gave his residuary estate to "all or any of my sons or son." The testator had three legitimate children, a son and two daughters, one of the latter being married. He also had three illegitimate children, a daughter and two sons.

Held, that the illegitimate children were not entitled to take under the will.

By his will the testator, who died in May, 1917, gave his house, furniture and effects to his "wife," Ada Bleckly, for life, and he also gave her certain jewellery and a legacy of £250. He then gave his residuary estate to his said wife for life, expressing a wish that she would out of the income maintain his unmarried daughters, and after the death of his wife he directed £1,000 to be raised for "each daughter," and, subject thereto, he gave his residuary estate to "all or any of my sons or son." The testator married in 1888, and had three children, one son and two daughters, one of whom was still unmarried. In 1894 the testator's wife died, and in January, 1896, he went through the ceremony of marriage with his deceased wife's sister, by whom he also had three children, a daughter and two sons. By this summons the trustees asked to have it determined whether Ada Bleckly and her children were entitled to take under the testator's will.

EVE, J., after stating the facts and the provisions of the will, said: As to the first question raised by the summons, whether Ada Bleckly is entitled to the gifts made to her by the will, there is no doubt that the lady is sufficiently described as the object of the testator's bounty. The second question is whether, under the expressions "daughter," "son," "child," and "children," the testator included the illegitimate children. It is contended that they are, and that the present case falls within the exceptions taken by Lord Cairns in *Hill* v. *Crook* (L. R. 6 H. L., at pages 265 and 282), from the general rule that the term "children" *prima facie* means legitimate children. The present case clearly does not fall within the first class of exceptions taken by Lord Cairns—that is, where it is impossible from the circumstances that any legitimate children can take. But it is contended that it falls within the second class of exceptions, where there is "upon the face of the will itself and upon a just and proper construction and interpretation of the words used in it an expression of the intention of the testator to use the term children not merely according to its *prima facie* meaning of legitimate children, but according to a meaning which will apply to, and which will include, illegitimate children." Does the present case fall within that exception? It is contended that it does, since the testator has recognized the existence of a marriage tie in speaking of the lady as his wife; but, notwithstanding these expressions, it is not a case in which the testator could have been under any misapprehension as to the facts, as he might have been in speaking of the children of another person than himself. These references do not therefore indicate any sufficient intention to take the case out of the general rule. It is further contended that, looking at the facts, the testator has provided for a plurality of unmarried daughters and a plurality of sons, and that he had in fact one only of each class, and that that is a sufficient indication that he intended to include illegitimate children. I do not see that that necessarily follows. There was nothing to prevent the birth of other legitimate children, and I must pay regard to the condition of affairs which might subsist when the will came into operation. At that time it is quite possible there might have been a plurality of each class, which would have been sufficient to answer the wording of the will. I cannot, therefore, hold that the illegitimate children are included in the bequest. It was suggested that there is an ambiguity in the will as to whom the testator meant by "each daughter" and "all or any of my sons or son," which would justify resorting to extrinsic evidence; but I think there is no such ambiguity as would justify me in having recourse to such evidence. The only children, therefore, who are entitled to take under the will are the unmarried legitimate daughter and the legitimate son, who takes the residue. The costs of all parties as between solicitor and client will be paid out of the residue.—COUNSEL, *Sheldon; Dighton Pollock; C. A. Bennett*. SOLICITORS, *Coward & Hawksley, Sons, & Chance*; *P. F. Walker*, for *Field & Sons*, Liverpool.

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

Re **ANNE E. CAMPBELL, an Infant, and** *Re* **THE GUARDIANSHIP OF INFANTS ACT, 1886.** Eve, J. 31st July.

PRACTICE—ORIGINATING SUMMONS—SERVICE OUT OF JURISDICTION—R. S. C., ORD. 11, r. 8A.

The words "foreign country" in Rule 8A of Order XI. have the same meaning as they have in Rule 8, and neither rule applies to Scotland or to any other part of the British dominions. There is therefore no jurisdiction to order service of any summons other than a writ of summons on a person in Scotland.

This was a motion whereby the applicant, Colonel William Campbell, a domiciled Scotsman, sought to discharge an order giving liberty to serve on him out of the jurisdiction an originating summons issued by his wife under the Guardianship of Infants Act, 1886, and it raised the question whether the Court or a judge has jurisdiction to order service of any summons other than a writ of summons on a party or person in Scotland.

EVE, J.: It is clearly established that there can be no jurisdiction in an English court to allow service of process out of the jurisdiction except by statutory enactment, and it is conceded that the statutory enactment applicable to this case is to be found, if at all, in Rule 8A of Order XI. That rule is in these terms: "The Court or a judge may direct that any summons, order or notice shall be served on any party or person in a foreign country, and the procedure prescribed by Order XI., Rule 8, with reference to service of notice of a writ of summons shall apply to the service of any summons, order or notice so directed to be served." There is nothing in the rule itself from which one would readily conclude that its operation was intended to extend to Scotland. It is limited in terms to service on a party or person in a foreign country, and it applies to that service the procedure of Rule 8, which is strictly confined to foreign countries. Moreover, although Rule 8 was the last rule in the Order when the new rule was added in 1909, it was not added as Rule 9 but as 8A—a circumstance which tends to support the view that it was regarded as an addendum to Rule 8 rather than as an independent rule affecting the whole Order. But on behalf of the respondent it has been argued that the intent with which the rule was introduced was to extend the ambit of the Order to the service of summonses, orders and notices, and that the expression "foreign country" means any country in which a different system of law prevails, in other words, any country of which the law might, from our standpoint, be spoken of as foreign law. There is not wanting authority to support this contention to some extent. In the case of *Re Aktiebolaget Robertfors, &c.* (1910, 2 K. B. at p. 732), the late Lord Alverstone, C.J., says: "As I understand the operation of Rule 8A it is this: The previous operative part of Order XI. which applies to writs of summons had caused a difficulty with regard to the service of other notices and summonses which the Court or the parties desired should be served on persons abroad and particularly with regard to the service of originating summonses which, as Collins, M.R., pointed out in *Rasch & Co.* v. *Wulfert* (1904, 1 K. B. 118), are the nearest approach to writs of summons, and accordingly Rule 8A was added. The effect of that appears to me to be perfectly clear. The first portion of it extends the ambit of the Rules other than Rule 8 to other official proceedings beyond writs of summons, namely, to a summons, order or notice. But the state of circumstances which justifies the Court in granting leave for service out of the jurisdiction under Order XI. of a document of that character must still be shewn. The rule then proceeds to say that, as to documents which come within the provisions of Rule 8, which relates only to certain countries to which the Lord Chancellor has directed it to apply, the provisions of Rule 8 shall apply. That construction makes Rule 8A perfectly intelligible." And much to the same effect is what Pickford, J., adds at p. 735, where he says: "It seems to me that the effect of that rule, Rule 8A, is pretty clear. The intention is to place summonses, orders and notices on the same footing as writs, and to give power to serve them out of the jurisdiction in the same way that writs are served." But these observations must be read in the light of the case with which the Court was there dealing—a case where the order sought to be set aside was an order giving leave to serve in France, and although they do no doubt show that the Court construed Rule 8A as extending to foreign countries not within Rule 8, they are not directed in any way to the point I have to consider, and when the expression "out of the jurisdiction" was used its application must, I think, be treated as limited to the class of case with which the Court had there to deal, that is, to cases where there was no question as to the country in which service was sought to be effected being other than a foreign country. To the question which I have to ask myself, Is Scotland a "foreign country" within the rule? I cannot return any but a negative answer. The expression "foreign country" is not to be found in the Order until Rule 8 is reached, and there, as I have already indicated, it is undoubtedly used in its ordinary and primary sense as referring to a state or country outside the King's dominions. In Rules 1, 3, 4 and 7 the expression used is "out of the jurisdiction," and I think it is impossible to read these four rules and Rules 8 and 8A without appreciating that a clear distinction is drawn in the Order between the two expressions. I think the words "foreign country" in Rule 8A have precisely the same meaning as they have in Rule 8, and that neither rule applies to Scotland or to any other part of the British dominions. There was therefore in my opinion no jurisdiction to make the order giving leave to serve the summons in this matter on the applicant in Scotland, and I therefore discharge the order, and, if they are asked for, with costs against the respondent.—COUNSEL, *Clayton*, K.C., and *Sheldon*; *Maugham*, K.C., and *H. Johnston*. SOLICITORS, *Andrew, Wood, Purves & Sutton*, for *Hooper & Fletcher*, Biggleswade; *Stibbard, Gibson & Co.*

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

High Court—King's Bench Division.

MOSELEY *v.* DIRECTOR OF PUBLIC PROSECUTIONS.
Div. Court. 21st July.

CRIMINAL LAW—PROCEDURE—INDICTABLE OFFENCES—SUMMARY PROCEDURE—RIGHT OF APPEAL—METROPOLITAN POLICE MAGISTRATES—METROPOLITAN POLICE COURTS ACT, 1839 (2 & 3 VICT. c. 71), SECTION 50—SUMMARY JURISDICTION ACT, 1879 (42 & 43 VICT. c. 49), SECTION 13, 19—CRIMINAL JUSTICE AMENDMENT ACT, 1914 (4 & 5 GEO. 5, c. 58).

A person charged at a police court in the metropolitan area, before a metropolitan magistrate, with one of the indictable offences set out in the First Schedule to the Summary Jurisdiction Act, 1879, who elects to be tried summarily by the magistrate, and who pleads guilty, has no other right of appeal than is given by section 19 of that Act. He has, therefore, no right of appeal, notwithstanding that by section 50 of the Metropolitan Police Courts Act, 1839, "any person who shall think himself aggrieved by the order or conviction may appeal to the justices of the peace at the next general or quarter sessions of the peace."

Case stated by the justices of the County of London. Fredk. John Moseley, the appellant, was charged on 1st February, 1919, at the West London Police Court with stealing three electric motors and three electric starters, of the value of £120, the property of his employers. The magistrate dealt with the charge under section 13 of the Summary Jurisdiction Act, 1879, which enables the magistrate, in the case of certain indictable offences specified in the First Schedule of that Act, to deal summarily with the case instead of sending it to trial. The appellant pleaded guilty, and was sentenced to six months' imprisonment. From this sentence the appellant appealed to Quarter Sessions. On the hearing the respondent (the Director of Public Prosecutions) contended that no appeal lay, as under section 19 of the Summary Jurisdiction Act, 1879, the appellant possessed no right of appeal, there being no appeal where the person charged pleaded guilty. The appellant contended that there was an absolute right of appeal under section 50 of the Metropolitan Police Courts Act, 1839. Section 50 of that Act is as follows:—"In every case of summary order or conviction before any of the said magistrates" (the magistrates of the police courts in the metropolitan area), "in which the sum or penalty adjudged to be paid shall be more than three pounds, or in which the penalty adjudged shall be imprisonment for any time more than one calendar month, any person who shall think himself aggrieved by the order or conviction may appeal to the justices of the peace at the next general or quarter sessions of the peace. . . ." The Court of Quarter Sessions accepted the contention of the respondent, and dismissed the appeal, and stated a case for the opinion of the High Court. Section 19 of the Summary Jurisdiction Act, 1879, provides that, "Where, in pursuance of any Act, whether past or future, any person is adjudged by a conviction or order of a Court of Summary Jurisdiction to be imprisoned without the option of a fine, either as a punishment for an offence, or, save as hereinafter mentioned, for failing to do or to abstain from doing any

act or thing required to be done or left undone, and such person is not otherwise authorized to appeal to a court of general or quarter sessions, and did not plead guilty, or admit the truth of the information or complaint, he may, notwithstanding anything in the said Act, appeal to a Court of General or Quarter Sessions against such conviction or order." For the respondent (the Director of Public Prosecutions) it was contended that the appellant gained the benefit of the summary procedure under the Act of 1879 instead of being sent to trial on indictment by Judge and jury, as he must have been before the Act of 1879. As the appellant elected to be tried under the provisions of the Act of 1879 his appeal must also be limited by the restriction on the right of appeal given in section 19 of the Act, so that the right of appeal was gone on his pleading guilty.

Earl of READING, L.C.J., in his judgment, said the whole question turned upon the meaning to be attributed to certain sections of the Summary Jurisdiction Act, 1879, and to section 50 of the Metropolitan Police Courts Act, 1839. It had been argued for the appellant that the appeal lay, since section 50 stated in express terms that in every case of a conviction before the magistrates in which the penalty adjudged should be prison for more than one calendar month, any person so convicted might appeal. The answer made to that by the respondent was that the Metropolitan Police Courts Act, 1839, and the Metropolitan Police Act, 1839 (2 and 3 Vict., c. 47), formed no more than a code of offences which could be dealt with summarily by the magistrates, and at that time none but these offences, which were all non-indictable offences, could be dealt with by the magistrates summarily, and the magistrates had no jurisdiction over them except by committing for trial. It was not until the Summary Jurisdiction Act, 1879, was passed that metropolitan magistrates, as well as other justices, obtained the power of dealing summarily with certain classes of indictable offences. It was, therefore, contended by the respondents that there could not be any distinction drawn between indictable offences committed in the Metropolitan Police Court area, and indictable offences committed in any other area in the country, and that the Summary Jurisdiction Act, 1879, was of general application. Now, if the right of appeal under section 19 of the Act of 1879 applied to the present case, and the only right of appeal was that given by that section, then it was clear the appellant had no right of appeal, as one of the conditions, to name no other, was that the appellant should not have pleaded guilty, and the appellant did plead guilty. He (his lordship) had great disinclination to take away a right of appeal given in express language by a statute, unless there were words which either expressly or impliedly did so. He had come to the conclusion, however, that the Legislature did not intend there should be any right of appeal for a person who pleaded guilty to an indictable offence before the magistrate, and who elected to be dealt with by the magistrate instead of being tried by a jury, other than the right given under the Statute which conferred this extended jurisdiction. The opinion he (his lordship) had formed was that the right of appeal under section 50 of the Act of 1839 was to be limited when applied to an indictable offence dealt with under section 13 of the Summary Jurisdiction Act, 1879, to the right of appeal given by section 19 of that Act. There was therefore no right of appeal in that case, and the order of the Court of Quarter Sessions dismissing the appeal should be affirmed. It was unnecessary to say anything further in regard to section 50 of the Act of 1839, except that his remarks were not intended to apply to any right of appeal which might be given under that Statute, save in the case the Court had to deal with, that of indictable offences dealt with under section 13 of the Summary Jurisdiction Act. He would also add that the Criminal Justice Amendment Act, 1914 (4 & 5 Geo. 5, c. 58), which dealt with the right of appeal from a decision of a Court of Summary Jurisdiction, also seemed to make it apply only to a person who did not plead guilty, or did not admit the truth of the information. He did not draw any further inference, however, from this than that this section of the Act which dealt with the right of appeal seemed to make the Acts work perfectly simply, and as intended by the Legislature.

DARLING, J., delivered a judgment to the same effect, pointing out that a decision in favour of the appellant would result in an absurdity. A person charged with an offence before a Metropolitan magistrate, who was a skilled lawyer of great experience, would have a right of appeal, whereas a person charged with the same offence before two or three county justices would not have a right of appeal.

SANKEY, J., agreed.—COUNSEL, *Roome*, for the appellant; Sir *Richard Muir* and *Adrian Clark*, for the respondent. SOLICITORS, *Pierron & Morley*; Treasury Solicitors.

[Reported by G. H. KNOTT, Barrister-at-Law.]

A Reuter's message from Paris, dated 13th August, says:—Austria will be known internationally as the Republic of Austria, but the Powers will permit her to style herself the Republic of German-Austria if she so wishes.

A Reuter's message from Washington, dated 12th August, says:—It is announced that the International Labour Conference provided for in the Peace Treaty has been called by President Wilson to meet in Washington on 29th October.

New Orders, &c.

Board of Trade Orders.

FINANCE ACT, 1919.

IMPERIAL PREFERENCE.

Order Relating to Sugar and Tobacco.

In pursuance of Section 8 of the Finance Act, 1919, the Board of Trade, being satisfied that Refined Sugar, Molasses and Extracts from Sugar, and Manufactured Tobacco are to a considerable extent manufactured in the British Empire from material not wholly grown or produced within the Empire, hereby order that the preferential rates of customs duty shall, in the case of Refined Sugar, Molasses and Extracts from Sugar, and Manufactured Tobacco, be charged only in respect of such proportion of those goods as corresponds to the proportion of dutiable material used in their manufacture which is shown to the satisfaction of the Commissioners of Customs and Excise to have been grown or produced in the Empire.

6th August. [*Gazette*, 8th August.

Regulations as to the Proportion of Value resulting from Labour within the British Empire.

In pursuance of Section 8 of the Finance Act, 1919, the Board of Trade hereby make the following regulations:—

(1) Save as hereinafter provided goods shall not be deemed for the purposes of Section 8 of the Finance Act, 1919, to have been manufactured in the British Empire unless at least 25 per cent. of their total value is the result of labour within the British Empire.

(2) In the case of those classes of those goods in respect of which an Order has been made by the Board of Trade under Section 8, subsection (2) of the Finance Act, 1919, no part of the goods shall be deemed to have been manufactured in the British Empire unless at least 5 per cent. of the total value of the goods is the result of labour within the British Empire.

(3) Where a number of separate articles are included in one parcel or shipment, each and every article shall be considered separately for the purpose of calculating the proportion of value due to labour within the Empire.

(4) For the purposes of these regulations the total value of an article shall be its cost to the manufacturer at the factory or works, and shall include the value of containers and other forms of interior packing ordinarily sold with the article when it is sold retail, but shall not include the manufacturer's or exporter's profit or the cost of exterior

packing, carriage to port and other charges incidental to the export of the goods subsequent to their manufacture.

(5) In calculating the proportion of value which is the result of labour within the British Empire there may be included under the head of labour the cost to the manufacturer of any materials of purely Empire origin entering into the composition of the article (including the interior packing specified in Regulation (4)), the cost of manufacture including wages, proportion of fuel, supervision and other factory expenses, and the cost of the labour of packing for retail sale.

The following may not be included in the proportion of value which is the result of Empire labour, namely, any materials or interior packings not entirely of Empire origin, manufacturer's profit or the profit or remuneration of any trader, agent, broker or other person dealing in the article in its finished condition, the expenses of placing the goods in outside packages for export and the cost of such packages, transportation charges, insurance and any other charges for services after the goods leave the place of production or manufacture.

(6) Any question arising on the interpretation of these regulations shall be referred to the Board of Trade, whose decision shall be final.

6th August. [*Gazette*, 8th August.

TRADING WITH HUNGARY.

GENERAL LICENCE.

The Board of Trade, on behalf of His Majesty, and in pursuance of the powers reserved in the Trading with the Enemy Proclamations and all other powers thereunto them enabling, do hereby give and grant licence to all persons and bodies of persons resident, carrying on business, or being in the United Kingdom to trade and have commercial and financial transactions with persons or bodies of persons resident or carrying on business in Hungary:

Provided always that any licence which may be necessary in respect of any transaction under any prohibition of export or prohibition of import for the time being in force in the United Kingdom or in respect of any remittance of money out of the United Kingdom covered by Regulation 41 D of the Defence of the Realm Regulations is first obtained:

Provided also that this licence shall not permit any person or body of persons to pay to or for the benefit of any person or body of persons resident or carrying on business in Hungary any sum of money which by the terms of the Trading with the Enemy Amendment Acts, 1914 and 1915, or either of them, is required to be paid to the Custodian appointed under the Trading with the Enemy Amendment Act, 1914, but such sums of money must be paid to the said Custodian:

Provided further that this licence shall not permit any person or body of persons to pay or deliver any sum of money or property which is or but for the war would have been due or deliverable to any person or body of persons resident or carrying on business in Hungary in respect of a transaction entered into before the outbreak of war.

6th August. [*Gazette*, 8th August.

Food Orders.

THE INTOXICATING LIQUOR (OUTPUT AND DELIVERY) ORDER, NO. 2, 1919.

1. A brewer for sale shall not brew any beer at his brewery at an original gravity below 1010°.

2. (*a*) A brewer for sale shall not brew any beer at his brewery except at such original gravities as secure that the average original gravity of all beer brewed by him at that brewery during any quarter to which this Order applies (other than beer brewed under any licence granted by or under the authority of the Food Controller specially stating the gravity at which beer to be brewed thereunder is to be brewed) does not exceed in the case of a brewery situate in Ireland 1051°, or in the case of a brewery situated elsewhere in the United Kingdom 1044°.

(*b*) Where provision has been made to the satisfaction of the Commissioners of Customs and Excise for the dilution with water of beer after brewing, and the dilution is carried out under conditions approved by the Commissioners, the diluted beer shall for the purpose of the foregoing sub-clause be deemed to have been brewed at such original gravity as the Commissioners may determine.

3. If any question shall arise under this Order as to the average original gravity of beer, such question shall be determined by the Commissioners.

4. Expressions to which a special meaning is attached by the Output of Beer (Restriction) Act, 1916, shall, unless the context otherwise requires, have the same meaning when used in this Order.

5. The Orders mentioned in the first column of the Schedule hereto are hereby revoked to the extent specified in the second column of the Schedule, but without prejudice to any proceedings in respect of any contravention thereof.

6. Infringements of this Order are summary offences against the Defence of the Realm Regulations.

7. (*a*) This Order may be cited as the Intoxicating Liquor (Output and Delivery) Order, No. 2, 1919.

(*b*) This Order shall apply to the quarter commencing on the 1st July, 1919, and until further notice to every succeeding quarter.

31st July.

The Schedule.

Column 1.	Column 2.
Name of Order.	Extent to which revoked.
Intoxicating Liquor (Output and Delivery) Order, 1917. S.R. & O., No. 270 of 1917.	Part 1—Beer (Clauses 1 to 3 of the Order).
Intoxicating Liquor (Output and Delivery) (Ireland) Order, 1918. S.R. & O. No. 1235 of 1918.	The whole Order.
Intoxicating Liquor (Output and Delivery) Order, 1919. S.R. & O. No. 104 as amended by S.R. & O. Nos. 518 and 641 of 1919.	The whole Order.

ORDER AMENDING THE BEER (PRICES AND DESCRIPTION) ORDER, 1919.

The Food Controller hereby orders that the Beer (Prices and Description) Order, 1919, as amended by the Order dated 9th May, 1919 (S.R. & O., 1919, No. 103, as amended by 1919, No. 565) (hereinafter called the Principal Order), shall be further amended as follows:—

1. The Schedules to this Order shall be substituted for the Schedules to the Principal Order.

2. Copies of the Principal Order hereafter to be printed under the authority of His Majesty's Stationery Office shall be printed with the amendment provided for by this Order, and the Principal Order shall, on and after the 1st August, 1919, be read and take effect as hereby amended.

12th July.

The First Schedule.

Sales of Beer by Retail in a Public Bar or for Consumption off the Premises.

[*Maximum Prices.*]

The Second Schedule.

Sales of Beer by Retail for Consumption on the Premises Elsewhere than in a Public Bar.

[*Maximum Prices.*]

The following Food Orders have also been issued:—

The British Cheese Order, 1917. Notice prescribing maximum first-hand prices in respect of certain varieties of cheese. 10th July.

Order amending the Bacon and Ham (Prices) Order, 1919. 10th July.

Order amending the Jam (Prices) No. 2 Order, 1918. 16th July.

The Retirement of County Court Judges.

COUNTY COURT JUDGES (RETIREMENT PENSIONS AND DEPUTIES) BILL.

The following is the text of this Bill:—

1. *Compulsory retirement of judges.*]—The office of county court judge shall be vacated at the end of the completed year of service in the course of which the holder of the office attains the age of seventy-two:

Provided that the Lord Chancellor may extend that age from time to time up to such later age (not exceeding seventy-five), as he thinks fit in the case of any county court judge who has attained the age of seventy-two, if he considers that the retention of his services would be desirable in the public interest.

2. *Pensions of county court judges.*]—(1) It shall be lawful for the Lord Chancellor from time to time to recommend to the Treasury that there shall be paid to any county court judge—

(*a*) if his office is vacated in pursuance of this Act; or

(*b*) if the Lord Chancellor is satisfied by means of a medical certificate that he is incapable, from infirmity of mind or body, to discharge the duties of his office, and that such incapacity is likely to be permanent; or

(*c*) if he retires after fifteen years' service, and at the time of retirement had attained the age of sixty-five years,

an annual sum by way of pension calculated in accordance with the scale contained in the Schedule to this Act, *and such sum shall be charged on and paid out of the Consolidated Fund of the United Kingdom, or the growing produce thereof*, and shall be paid quarterly or otherwise in every year as the Treasury may direct.

(2) A person to whom a pension has been granted under this Act before he has attained the age of seventy-two years, in consequence of the incapacity in this section mentioned, shall, until he has attained

that age, be liable to be called upon by the Lord Chancellor to resume the duties of a county court judge with the salary attached thereto, and if (being in a competent state of health) he declines when so called upon to resume such duties or declines or neglects to execute such duties satisfactorily, he shall forfeit his right to the pension which has been granted to him.

(3) Whenever a person has resumed his duties as aforesaid, the payment of the pension which has been granted to him shall be suspended during his period of resumed service, but at the end of that period his pension shall again be payable and be recalculated in accordance with the said scale, and for that purpose the period of his resumed service shall be added to his former period of service.

(4) In the exercise of his powers under section eight of the County Courts Acts, 1888, the Lord Chancellor shall, before appointing a person to be a county court judge, take steps to satisfy himself that that person's state of health is satisfactory.

(5) The decision of the Treasury on any question which arises as to the application of any provision of this Act to any person, or as to the amount of any pension under this Act, or as to the reckoning of any service for such a pension, shall be final.

3. *Application to existing judges.*]—The foregoing provisions of this Act relating to retirement and pensions of county court judges shall not apply to any county court judge appointed before the first day of June, nineteen hundred and nineteen, unless he shall give written notice, in such form and within such period as may be prescribed by the Lord Chancellor, of his desire to accept those provisions in lieu of the provisions repealed by this Act.

4. *Remuneration and qualification.*]—(1) Where a deputy has been appointed in the case of the illness of any judge, the Treasury may, on the recommendation of the Lord Chancellor, allow the deputy such remuneration as they think fit, *and the remuneration so allowed shall be paid out of money provided by Parliament.*

(2) It is hereby declared that amongst the persons qualified to be appointed as deputy judge under section eighteen of the principal Act there is included a former judge of county courts.

5. *Repeal, construction, and citation.*]—(1) Section twenty-four of the County Courts Act, 1888, is hereby repealed, except as respects judges to whom the provisions of this Act relating to retirement and pensions of county court judges do not apply.

(2) This Act shall be construed as one with the County Courts Act, 1888, and the Acts amending the same, and the County Courts Act, 1888, the County Courts Act, 1903, and this Act may be cited together as the County Courts Acts, 1888 to 1919; and this Act may be cited separately as the County Court Judges (Retirement Pensions and Deputies) Act, 1919.

SCHEDULE.

SCALE OF PENSIONS.

When the number of completed years of service in the office of county court judge is :—

Less than 5, the annual pension shall not exceed	six-
5, ...	ten-
6, ...	eleven-
7, ...	twelve-
8, ...	thirteen-
9, ...	fourteen-
10, ...	fifteen-
11, ...	sixteen-
12, ...	seventeen-
13, ...	eighteen-
14, ...	nineteen-
15, or more	twenty-

thirtieths of the last annual salary.

The Law of Combinations.

(*Continued from p.* 740.)

C. Disqualifying or Disabling Measures.—I may describe as such laws or binding judicial decisions which declare certain contracts to be illegal in the sense that Courts refuse to give aid in carrying them out, or decline to intervene by injunction or otherwise to protect rights alleged to be acquired under such contracts. This is the main part of the English law affecting monopolies. Upon this matter the policy of the Court has fluctuated much. The inclination for a time was to uphold such contracts if the restraint upon carrying on a trade was not larger than the protection of the party with whom the contract was made reasonably required. The interest of the parties to the contract was mainly, often exclusively, considered. In later cases there has been recognition of the interests of the public, and the law in its present form may be stated in the words of Lord Macnaghten's judgment in *Nordenfelt* v. *Maxim Nordenfelt Co.* (1894, A. C., p. 565) (quoted in Mr. Wetton's statement, pp. 3, 4 and 19).

This forms a part of the larger subject of "public policy" generally, upon which these brief observations are submitted. As understood by our Courts, "public policy" is not necessarily identical with the interests of the community. It is confined to certain heads or kinds of "public policy" which from time to time the Courts have recognized. As Burrough, J., said in *Richardson* v. *Mellish* (2 Bing, 229, 252): "It is a very unruly horse, and when once you get astride of it you never know where it will carry you"; in fear of which the courts have narrowed the meaning of the phrase: see *Egerton* v. *Brownlow* (4 H. L. C. 1). So far as economical policy is concerned, the courts understand "public policy" as tantamount to freedom of trade, or disapproval of measures in restraint of trade. This limitation seems unreasonable. It is suggested that a wider significance should be given to the doctrine of "public policy," and that the economic effect of contracts and combinations should be examined by courts as they would be by trained economists. There is a recognition of this in the Australian Industries Preservation Act, 1906-10. Penalties are imposed upon any person who, either as principal or as agent, makes or enters into any contract, or is or continues to be a member of, or engages in, any combination in relation to trade or commerce with other countries or any State (a) in restraint of or with intention to restrain trade, or commerce, or (b) to the destruction or injury, or with any intent to injure or destroy by means of unfair competition any Australian industry the preservation of which is advantageous to the Commonwealth having regard to the interest of producers and consumers.

The present doctrine, which is that contracts in restraint of trade are against the interests of the community, is unsatisfactory in several respects. In applying that doctrine the Courts do not, and, as far as I can judge, may not inquire into the nature of the trade to which the contract relates. Yet obviously there are trades, parasitic or mischievous, which, though not illegal, should as much as possible be discouraged.* One of the reasons for the present law, as stated in the leading case of *Mitchel* v. *Reynolds*, was that the public would be injured by "depriving it of a useful member": a reason obviously not applicable to trades overstocked or of no or questionable advantage to the community—*e.g.*, the trade of a money-lender or bookmaker. Further, the argument generally used in support of the common law doctrine—*viz.*, that no one ought to be deprived of his skill—had much more force in days when the prevalent system of apprenticeship prevented persons freely moving from one trade to another.

The question whether a particular agreement is contrary to public policy often is, and must be, very complex and difficult. Yet for no apparent good reason it is treated as a question of law to be determined by the judge, not necessarily or probably conversant with economics, and generally without data necessary in the particular case upon which to form a sound opinion. See remarks of Bowen, L.J., in *Davies* v. *Davies*, in which he said: "We have got no material upon which we can, without leaping in the dark, assume that the present covenant is a benefit to the public." (36 Ch. D., p. 391.)†

Assuming the question to be for the judge to determine, it is remarkable that the Court cannot hear evidence as to this matter.

NOTE.—It is right to mention that this has been doubted by some judges. But probably Bowen, L.J.'s, opinion is that most commonly entertained.

D. Punitive Measures.—Such measures were much relied upon in past times. The Statutes against forestalling and regrating or badgering imposed severe punishments upon transgressors. Legislation in the United States (*e.g.*, Sherman Act) punishes breaches by heavy penalties. So, too, does the corresponding Australian legislation. No doubt, if the law such as here suggested were broken, if exorbitant charges are exacted, or if there is unfair preference, fines proportionate to the gains acquired by such conduct ought to be imposed. But I am inclined to think that such punitive measures are of less consequence than the other remedies above suggested.

E. Unfair Competition.—One part of the subject not to be lost sight of relates to unfair competition. In every country has arisen the question: Is there any legal limit to competition? May it be carried on without infringing the law, however evil morally be the motive, so

* In recent cases there is a disposition to enlarge the conception of public policy. See in particular the decision of Sankey, J., in *Trustee of Dunny* v. *Dunny and Ward* (*Weekly Notes*, February 15, 1919), and the remarks of Lord Haldane in *Rodrigues* v. *Speyer Brothers* (1919, A. C., p. 81).

† In Mayim v. Nordenfelt, etc. (1893, 1 Ch., p. 640), Bowen, L.J., remarks that Judges have always treated the question as one of law.

long as there is no injury or "tort" in the legal sense? May A, for example, by systematic undercutting of rates unremunerative to himself, destroy the business of B without legal remedy on the part of the latter? Upon this point there have been in England great differences in judicial opinion. But since the decision of the House of Lords in *Allen* v. *Flood* (1898, A. C. 1) and *Quinn* v. *Leathem* (1901, A. C. 495), the law appears to be that, whatever may be the motive of the person carrying on "unfair competition," no action will lie in the absence of injury in the legal sense. To quote Lord Lindley in *Quinn* v. *Leathem*, "an action will lie only if there is an unlawful act."‡

Further, in deciding as our Courts have done in regard to "unfair competition," they seem to be pursuing a course in conflict with the general policy of the law. By their decisions as to restraint of trade they have sought to maintain competition with a view to prevent creation of monopolies. On the other hand, by the principle laid down in the *Mogul case* and in *Allen* v. *Flood*, they have legalized what is in practice the most effective mode of destroying competition and creating a monopoly—*i.e.*, undercutting and other devices for destroying rivals in trade.

This conclusion of the English courts seems contrary to decisions arrived at in the United States and the Sherman Act, and to the German law, which allows the Court great discretion as to "unfair competition." (See Dr. Ernest Schuster's evidence before the Commission on Deferred Rebates.) It is also contrary to some modern legislation in the Dominions. Thus the Australian Industries Preservation Act, 1906-10, makes destruction or injury to, or intention to destroy or injure, an Australian industry by "unfair competition" an offence.§

F. Tribunals and Procedure.—I attach greater importance to this class of suggestions than to proposals as to fines or other penalties. So long as the business of the Courts is merely or chiefly to determine whether this or that contract, as tested by a long string of previous binding decisions, is in restraint of trade, the present procedure, the present form of judgment and the present Courts may suffice. But they would be inapt, it is submitted, if the questions to be investigated were, as they often must be, should the above suggestions be carried out, complicated economic problems. A judge with the usual experience obtained at the Bar or on the Bench would not presumably be qualified to conduct the necessary inquiry, still less a jury. It is suggested that, except for the simpler classes of cases, a tribunal framed somewhat on the lines of the Railway Commission would be most suitable. Perhaps in some cases a commission *ad hoc* would be requisite. The procedure of our Courts is in many respects unsuited to the investigation of these questions. It should be simpler. Interlocutory applications, always entailing expense and often delay, &c., should be discouraged. The proceedings it is suggested, should be in public, and reasons should be given for decisions of the tribunal; a useful safeguard against arbitrary action. It is essential, it seems to me, that there should be a frequent renewal of the composition of the tribunal. In view of the rapid changes in industry, it would be unfortunate if the character of the tribunal were stereotyped. Periodical infusion of new members would keep it in touch with trade or business as it is.

The above suggestions are mere outlines of proposed changes. They do not provide for many details of necessity to be carefully considered, among others, such matters as these: the precise alterations needed in the general law as to restraint of trade; how far the jurisdiction of the suggested new tribunal should be exclusive or co-ordinate; what precautions should be taken in changing the law not to discourage or obstruct private enterprise.

‡ What is the real basis of the decision in *Quinn* v. *Leathem*—whether the existence of a conspiracy or the moral pressure exercised by mere numbers—is uncertain. (See Clerk and Lindsell "On Torts," 6th ed., p. 25).

§ See report on Trust Laws (1915, p. 529) on unfair competition.

Legal News.

Changes in Partnerships.

Dissolutions.

WILLIAM GEORGE ALBERT EDWARDS and CHARLES JOSEPH CROUGHTON DAVENPORT, solicitors (W. G. A. Edwards), 3, Coleman-street, London, E.C. July 31

FRANCIS EDMUND PIESSE, MONTAGU PIESSE and STANLEY PIESSE, solicitors (Piesse & Sons), 15, Old Jewry-chambers, London, E.C. Aug. 6. So far as regards the said Francis Edmund Piesse, who retires from the firm. The said Montagu Piesse and Stanley Piesse will continue to carry on the business under the same style or firm as heretofore.

[*Gazette*, Aug. 12.

General.

A Reuter's message from Madrid, dated 7th August, says:—After a short discussion the Chamber approved the report of its Committee concerning the adhesion of Spain to the League of Nations.

The Cumberland County Council rejected on the 6th inst., by 30 votes to 11, a proposal by Alderman Musgrave, of Whitehaven, for a carriage road over Styhead Pass.

Mr. Bonar Law, in a written answer to a question by Mr. Spoor, issues a warning to purchasers of land and petroleum rights. Mr. Spoor asked whether the policy of the Government in regard to nationalization or control of mines will also be applied to oilfields; and whether, in the interests of the country, the desirability will be considered of withholding licences to develop oil areas until the Government has decided upon its policy, so that, in the event of the Government proposing to nationalize oilfields, it may not be opposed by a vested interest. Mr. Bonar Law's reply is that, as regards the first part of the question, the matter is now under consideration, and, pending a decision, it is the policy of the Government to withhold licences to develop oil areas. I may add, says Mr. Law, that until the Government has come to a decision as to the ownership of petroleum in the British Isles, the purchasers of land and petroleum rights are warned not to assume that the ownership of petroleum is vested in the owner of the surface rights.

In the House of Commons, on the 7th inst., Major Barnett asked the Parliamentary Secretary to the Ministry of Munitions if he could state the total cost to the country of the unsuccessful litigation conducted by the Liquor Control Board against the Cannon Brewery Company; whether the case in question was heard by one judge in the King's Bench Division, by three in the Court of Appeal, and by four in the House of Lords; whether the decision of all eight judges was unanimously against the Liquor Control Board, with costs; and, if so, what useful purpose had been served by this litigation. Sir G. Hewart, Attorney-General, who replied, said:—I am informed that the total estimated amount of the costs and charges referred to is about £3,700. The case was heard originally by a judge of the Chancery Division. In the Court of Appeal it was heard by three Lords Justices, who were not unanimous. In the House of Lords a unanimous judgment was given against the Liquor Control Board. It was essential that this case should be taken to the House of Lords for the following, among other, reasons:—First, because it was repeatedly stated by the Government in the House of Commons in 1915 that compensation in cases of this kind, would be dealt with by the Royal Commission established for the purpose; and, secondly, because it is not right, unless it be absolutely unavoidable, that different owners should receive different measures of compensation. In reply to Sir D. Maclean, Sir G. Hewart said the point was that the brewery company felt that they were entitled to compensation under the terms of the Lands Clauses Act, involving 10 per cent. for compulsory sale.